IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Applicant: Yukie	)	Art Unit: 3628
	)	
Serial No.: 09/542,139	)	Examiner: Bui
	)	
Filed: April 4, 2000	)	**50P 3859.02**
	)	
For: **SYSTEM AND METHOD FOR PROVIDING**	)	July 29, 2003
PUBLICLY VENDED CONTENT VIA A WIRELESS	)	750 B STREET, Suite 3120
NETWORK	)	San Diego, CA 92101
	)	

<u>APPEAL BRIEF</u>

Commissioner of Patents and Trademarks
Washington, DC 20231

Dear Sir:

This is an appeal of the final rejections contained in the Office Action dated July 11, 2003. This brief

is submitted under 35 U.S.C. §134, and is further to Appellant's Notice of Appeal filed herewith.

Table of Contents

1168-2.APP

CASE NO.: 50P 3859.02
Serial No.: 09/542,139
July 29, 2003
Page 2

PATENT
Filed: April 4, 2000

(1)   Real Party in Interest

The real party in interest is Sony Corp.

(2)   Related Appeals/Interferences

No other appeals or interferences exist which relate to the present application or appeal.

(3)   Status of Claims

Claims 1-5, 8, 10, 12-17, 22, 24, 26, and 29-35 are pending and finally rejected.

(4)   Status of Amendments

No amendments are outstanding.

(5)   Summary of Invention

As set forth in Claim 1, the invention is a computer system that has a computer network path, at least a portion of which is wireless. A user terminal in the path and a connect server communicates with the user terminal to receive requests for content from the user terminal by accessing a database of publicly vended content. A billing module accessible to the connect server generates accounting data based on each request for content received and/or each piece of content delivered to the user terminal and/or a content subscription and/or a type of user terminal and/or a number of IP packets delivered to the user terminal.

(6)   Issues

(a)   Whether Claims 1-5, 8, 10, 12, 24, 26, 29, and 33-35 are unpatentable under 35

U.S.C. §102 as being anticipated by Van Horne et al.

(b)   Whether Claims 13-17, 22, and 30-32 are unpatentable under 35 U.S.C. §103 as

being obvious over Van Horne et al. in view of Roy, III et al.

(7)   Grouping of Claims

Claims 1-5, 8, 10, 12, 24, 26, 29, and 33-35 stand apart from the remaining rejected claims owing

to the different grounds of rejection.

(8a)   Argument

The independent claims (1, 12, and 24) specify that accounting data is generated for billing the user

based on one or more of <u>each request for content received, a content subscription, a type of user terminal,</u>

<u>and a number of IP packets delivered to the user terminal</u>. In contrast, Van Horne et al. is directed to billing

travelers only based on the amount of time they are connected to the Internet in, e.g., a hotel room,

regardless of content provision considerations (see Abstract, indicating that billing is based on usage time;

col. 17, lines 9-12, disclosing that billing charges are determined at disconnect; col. 20, line 30, disclosing

that total activity time is used for billing). Nowhere does Van Horne et al. suggest generating accounting

data based on anything other than total time connected. To the extent that Van Horne et al. has "billing

CASE NO.: 50P 3859.02   **PATENT**
Serial No.: 09/542,139   **Filed: April 4, 2000**
July 29, 2003
Page 4

options", they are actually payment options for the user to decide how the user wishes to pay, col. 14, lines 19-21. A user of Van Horne et al. will thus be billed even if no content is ever actually provided.

Nonetheless, the rejections allege that Van Horne et al. in essence "provides subscription" because it enables a user to log onto its system. But the amended independent claims do not merely state "subscription". Rather, they specify "content subscription", a concept never touched on by Van Horne et al.

First, Van Horne et al. does not provide a "subscription". A "subscription", broadly defined, is a purchase made as for a periodical for a predetermined time period, as opposed to the one-off service provided to transient travellers by the hotel room system of Van Horne et al. for a period of time that is indeterminate at the outset and known only once the user is finished, American Heritage College Dictionary, Third Ed., 1993 (Houghton-Mifflin Co.), see Texas Digital Systems, Inc. v. Telegenix, Inc., 308 F.3d 1193, 64 USPQ2d 1812 (Fed. Cir. 2002), requiring that claims terms be given their relevant dictionary meanings.

Second, even assuming that despite the plain meaning of the term, Van Horne et al. provides a "subscription", the only "subscription" provided by Van Horne et al. is a content-independent subscription, depending solely, as it does, on the length of time connected.

The examiner contends that because, through the content-independent service provided by Van Horne et al., the user can access "contents" on the Internet, well then, the content-independent service of Van Horne et al. can be considered to be a "content subscription" after all. This Red Queen way of looking at things, however, effectively erases the modifier "content" from the claims, leaving only the noun "subscription", a ploy to deny patentability that is as unimaginative as it is illegal. If the content-independent one-time service

of Van Horne et al. is considered to be a "content subscription", then the term "content subscription" effectively has been deprived of any meaning, rendering it superfluous.

As mentioned above, a claim must be interpreted as one skilled in the art would interpret it. No evidence has been adduced of record that the skilled artisan would consider a general network access service to be the same thing as a content-based subscription, and indeed such is not the case. Note that on page 14, first sentence of the present specification time-based services are explicitly contemplated, but are not included in the present claims.

The examiner next alleges that Van Horne et al. col. 4, line 65 - col. 5, line 1 teaches metering connections and, hence, billing based on content or usage. The examiner appears to be confused. The relied-upon section of Van Horne et al. discusses the server sending "welcome" signals to the user, without ever mentioning billing, much less billing based on any particular paradigm. The examiner also attempts to ratchet the "welcome" signal teaching into a teaching of billing based on user terminal type. Not only is the connection between the two inscrutable to the reader of Van Horne et al., the user terminal type is not disclosed to be of any use in Van Horne et al., which evidently sees its service as being platform-independent. Thus, not only is billing based on user terminal type NOT inherent in Van Horne et al. (which otherwise means it must be a necessary part of Van Horne et al., MPEP §2112), it seems not be required at all.

8(b)   Argument

Claims 13-17, 22, and 30-32 have been rejected under 35 U.S.C. §103 as being unpatentable over Van Horne et al. in view of Roy, III et al., used as a teaching of SDMA. The claims rejected under this section are dependent claims and are thus patentable for the reasons above.

1168-2.APP

CASE NO.: 50P 3859.02
Serial No.: 09/542,139
July 29, 2003
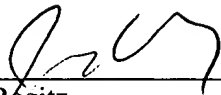Page 6

PATENT
Filed: April 4, 2000

Further, two additional comments are germane. First, there is no stated *prior art* motivation to combine the references as proposed, as is otherwise required by MPEP §2143.01 (a statement that modifications of the prior art to meet the claimed invention would have been "within the ordinary skill of the art at the time the claimed invention was made" because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a prima facie case of obviousness without some objective reason suggested by the prior art and not by the Examiner to combine the teachings of the references, MPEP §2143.01, first, second, and seventh paragraphs.) The proferred motivation to use SDMA with Van Horne et al. - that it can improve the capacity and quality of communication between the users and base station - is without prior art support from Van Horne et al. Indeed, considering that Van Horne et al. envisions the use of a high speed LAN in a hotel, there would be no plainly evident need to employ SDMA in Van Horne et al. Moreover, the connect server of Roy, III et al. cannot apparently provide the content as required of the claimed server, so that combining Roy, III et al. with Van Horne et al. would entail unknown (and to date ignored) modifications, the scope of which can only be guessed at. In any case, nowhere does Van Horne et al. suggest the use of SDMA, and nowhere does Roy, III et al. suggest the use of its system with a service for providing travellers with Internet access. Accordingly, the requisite prior art suggestion to combine is missing, rendering the prima facie case defective.

Second, all the examiner has managed to say about the claimed transmission rate of Claims 30-32 is that "at this rate everything will move at high speed". Correct! But so what? Without a prior art suggestion to modify Van Horne et al. to meet the claims, the examiner's observation is merely academic.

1168-2.APP

Respectfully submitted,

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1168-2.APP

CASE NO.: 50P 3859.02
Serial No.: 09/542,139
July 29, 2003
Page 8

PATENT
Filed: April 4, 2000

APPENDIX A - APPEALED CLAIMS

1.   A computer system, comprising:
a computer network path, at least a portion of which is wireless;
at least one user terminal in the path;
at least one connect server communicating with the user terminal, the connect server receiving requests for content generated from the user terminal, the connect server accessing a database of publicly vended content to fulfill the requests; and
at least one billing module accessible to the connect server for generating accounting data based on at least one of: each request for content received, each piece of content delivered to the user terminal, a content subscription, a type of user terminal, and a number of IP packets delivered to the user terminal.

2.   The computer system of Claim 1, wherein at least a portion of the network path is a directional wireless path.

3.   The computer system of Claim 2, wherein the directional wireless path has no telephony switches therein.

4.   The computer system of Claim 1, wherein the content is provided to the user terminal over the network path in packets.

5.   The computer system of Claim 4, wherein the packets are in IP protocol format.

8.   The computer system of Claim 1, wherein the subscription is established at least in part by a user profile.

10.   The computer system of Claim 1, wherein the billing module generates accounting data based at least in part on at least one time period.

12.   A method for vending content, comprising the acts of:
rendering the content in a digitized format;
making the content available on a computer network;
establishing at least one network path between the network and a user terminal, at least a portion of the path being a private wireless path;
sending the content to the user terminal via the network path; and
generating accounting data representative of the provision of content to the user terminal; wherein the accounting data is based on at least one of:
a request for a content piece from the user terminal;
a content subscription;
a number of packets delivered to the user terminal; and

CASE NO.: 50P 3859.02
Serial No.: 09/542,139
July 29, 2003
Page 9

PATENT
Filed: April 4, 2000

a type of the user terminal.

13.   The method of Claim 12, wherein the private wireless path is a directional path.

14.   The method of Claim 13, wherein the private wireless path is an SDMA path.

15.   The method of Claim 13, wherein the wireless path has no telephony switches therein.

16.   The method of Claim 13, wherein the content is provided to the user terminal over the network in packets.

17.   The method of Claim 16, wherein the packets are in IP protocol format.

22.   The method of Claim 13, wherein the accounting data is generated based at least in part on at least one time period.

24.   A computer program device comprising:
a computer program storage device readable by a digital processing apparatus; and
a program on the program storage device and including instructions executable by the digital processing apparatus, the program comprising:
        computer readable code means for billing a user for the provision of digitized packetized audio or video content from the Internet via a wireless network path to a user terminal associated with the user, including at least one of:
        means for receiving a request for a piece of content from the user, the means for billing generating accounting data based at least in part on the request;
        means for generating accounting data based at least in part on a number of packets sent to the user via the path;
        means for generating accounting data based at least in part on a content subscription for content; and
        means for generating accounting data based at least in part on a type of user terminal.

26.   The computer program device of Claim 24, wherein the means for billing generates accounting data based at least in part on a number of packets sent to the user via the path.

29.   The computer program device of Claim 28, wherein the subscription is based at least in part on a user profile.

30.   The computer program device of Claim 24, wherein the network path has a data transmission rate of at least one Mbps.

CASE NO.: 50P 3859.02
Serial No.: 09/542,139
July 29, 2003
Page 10

PATENT
Filed: April 4, 2000

31.   The computer system of Claim 1, wherein the network path has a data transmission rate of at least one Mbps.

32.   The method of Claim 12, wherein the network path has a data transmission rate of at least one Mbps.

33.   The computer system of Claim 1, wherein the user terminal is established by a device type, the server detecting the device type and providing content according thereto.

34.   The method of Claim 12, wherein the user terminal is established by a device type, the device type dictating the content provided thereto.

35.   The computer program device of Claim 24, further comprising computer readable code means for determining a user terminal device type, the device type dictating the content provided to the user terminal.